

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

<u>IN THE MATTER OF:</u>)	
)	
Reef Environmental Services, L.L.C.)	
71 Twin Street)	CONSENT ORDER NO. 09-____-CAP
Sylacauga, Talladega County, AL)	
)	
<u>Air Facility ID No. 309-0062</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Reef Environmental Services, L.L.C. (hereinafter, “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto. The contents herein are the factual Stipulations mutually agreed upon by the parties, the factual Contentions of the Permittee, the factual Contentions of the Department, and provisions concerning the Consent Order settlement between the parties.

STIPULATIONS

1. Reef Environmental Services, LLC. (hereinafter, the “Permittee”) operates a Waste Collection & Treatment Plant (hereinafter, the “Facility”), Air Division Facility No. 309-0062, located at 71 Twin Street, Sylacauga, Talladega County, Alabama.

2. The Department is a duly constituted Department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On May 15, 2009, the Department issued the Permittee Air Permit No. 309-0062-X001 (hereinafter, the “Permit”) for the Wastewater Treatment Facility with Scrubbing System.

5. Proviso 18 of the Permit states: “The facility shall install and properly maintain a basin cover on Equalization Basin 1 (EQ1) and route the emissions from EQ1 to a scrubber system for odor control by June 30, 2009.”

6. Permit Proviso 21 of the Permit states: “The facility shall install and properly maintain a scrubbing system for the control of odors from EQ1.”

7. On July 1, 2009, the Department conducted an unannounced inspection of the Facility, which revealed an approximate 100 foot tear in the Equalization Basin 1 cover and that the required scrubbing system was not fully installed.

8. To accomplish an earlier resolution of this matter, as well as avoid the substantial costs and dedication of resources to pursue an appeal, the Permittee consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

9. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources

in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS OF THE DEPARTMENT

Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION:

The Department considers the following violations to be serious:

(1) The Permittee failed to comply with the requirements of Permit Provisos 18 and 21 by failing to install and route emissions to a scrubbing system by the date required.

(2) The Permittee failed to comply with the requirements of Permit Proviso 18 by failing to properly maintain the EQ1 basin cover.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable permit requirements, since the terms of the Permit were not met by the date required.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is unaware of any significant economic benefit that the Permittee may have achieved as a result of the above-mentioned violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts taken by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no history of previous violations with the Department.

F. THE ABILITY TO PAY: The Permittee has alleged a limited ability to pay the civil penalty and the Department has taken this allegation into consideration.

CONTENTIONS OF THE PERMITEE

As a general matter, the Permittee neither admits nor denies the Department's contentions. Specifically, the Permittee denies many of the Department's contentions and alleges as follows:

A. ADDITIONAL RELEVANT FACTS

(1) Permittee has always operated the cover within the guidelines and instructions provided by the manufacturer and installer. Permittee has never failed to properly maintain the basin cover. Instead, the tear in the basin cover is not the fault of any act or omission by the Permittee and is the consequence of delivery of a cover that was not appropriate for the type of treatment being performed by the Permittee and/or a manufacturing defect. With respect to the defect, the Permittee has promptly and vigorously addressed the problem, engaging in demands, discussions and negotiations with the seller and installer to remedy the tear or replace the cover.

(2) Permittee's delay in completing installation of the scrubbing system is not a consequence of its conduct, but a consequence of unforeseen and uncontrollable circumstances. Permittee commenced installation in sufficient time to meet permit requirements, but an Act of God, i.e., a thunderstorm, blew down the partially installed scrubber; this required re-fabrication of much of the scrubber and awaiting delivery of re-fabricated components from the manufacturer.

B. SERIOUSNESS OF THE VIOLATION

As previously stated, the inability to timely implement the scrubber was due to unforeseen and uncontrollable circumstances, which the Permittee immediately addressed. The scrubber has been fully operational since July 13, 2009. There is no reliable scientific evidence that the controlled emissions, i.e., odor, cause any injury to the environment or to human beings. Moreover, Permittee believes the Department's own air monitoring at the site, as well as surrounding areas, revealed no significant levels of hazardous air pollutants emanating from the Facility. Because of the fact that there is no irreparable harm to the environment or any threat to the health and safety of the public, the Permittee disagrees with the Department's characterization of this incident as

“serious”. *In fact, the partial completion of the project prior to the June 30, 2009 deadline has been independently characterized as a vastly positive step towards odor minimization.*

C. STANDARD OF CARE

Permittee disagrees with the characterization that it failed to exhibit a standard of care commensurate with the Permit requirements, as explained in its preceding contentions.

D. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED

There has been no, much less significant, economic benefit because of the delayed installation of the equipment. In fact, Permittee has incurred additional and substantial expenses solving equipment problems which were beyond its control.

E. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT

The Department’s suggestion that the Permittee may not have attempted to minimize or mitigate the effects of the violations is incorrect. The Permittee is unaware of any detrimental environmental or human effect resulting from its system, or the delays in the complete implementation of the scrubber, or the repair of the tear in the cover. In working with its professional consultant, the Permittee has reduced the total air flow to EQ 1 in an effort to minimize emissions from EQ 1. The Permittee plans to operate the scrubber with the cover deflated because experiences, as well as the Permittee’s consultant, indicate that it continues to provide a benefit in terms of reducing odor.

F. THE ABILITY TO PAY

Since the Permittee’s inception in 2007, it has operated at a financial loss and has been required to borrow additional capital to complete the voluntary, odor

minimization project. The proposed fine by the Department, which Permittee believes to be inappropriate in nature and amount, will have a significant detrimental impact on the future profitability of the Permittee. This has been mitigated somewhat by the payment terms agreed in this Order.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), the Permittee agrees to pay to the Department a civil penalty in the amount of \$72,000.00, payable in thirty-six monthly installments of \$2,000.00 each. The first payment shall be due on the first day of the month following the effective date of this Order, with each subsequent payment due on the first day of each month thereafter. Failure to pay the civil penalty within the allowed time frame may result in the Department's filing a civil action in the Circuit Court of Montgomery County to immediately recover the full unpaid amount of the imposed civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees that, immediately upon the effective date of this Order and continuing thereafter, Permittee shall take measures to ensure that all air pollution control devices and capture systems shall be properly maintained and operated in a manner as to minimize emissions of air contaminants, subject to the allowances and requirements provided in paragraphs F. and G. below.

D. The Permittee agrees that, immediately upon the effective date of this Order and continuing thereafter, Permittee shall ensure immediate and future compliance with the Alabama Air Pollution Control Act, federal Clean Air Act, applicable ADEM regulations, and all conditions of the ADEM Air Permits, except as may be provided by an ADEM approved compliance schedule contained in this Order or any other Order executed or issued by the Department, such as those provisions contained in paragraphs F. and G. below.

E. The Permittee agrees that immediately upon the effective date of this Order, the scrubber shall continue to operate properly to control the emissions from Equalization Basin 1.

F. The Permittee agrees that, by March 1, 2010, it shall have properly repaired or replaced the cover over Equalization Basin 1 and emissions from EQ1 shall be properly routed to the scrubbing system.

G. The Permittee agrees that until the Equalization Basin Cover is repaired or replaced, that the fan motor frequency associated with the scrubber shall be equal to or greater than 40 hertz to insure that the air scrubber is pulling a sufficient volume of captured air so as to minimize air emissions.

H. The Permittee agrees to comply with the terms, limitations, and conditions of the Permit and Department regulations immediately upon the effective date of this Consent Order and each and every day hereafter, until such time that the Permit is renewed, revoked, or voided, subject to the allowances and requirements of paragraphs F. and G above.

I. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

J. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are alleged in this Consent Order.

K. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors, vendors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

M. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein

concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

N. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

O. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

P. The Department and the Permittee agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

Q. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

R. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

S. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**REEF ENVIRONMENTAL
SERVICES, L.L.C.**

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

Kenton E. Hall, Member

Onis "Trey" Glenn, III
Director

Date Signed

Date Executed

Dave Dageforde, Member

Date Signed